

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

TOMMY LEE HIGHTOWER, JR.,  
TDCJ No. 1038986,  
Petitioner,

V.

THE STATE OF TEXAS,

Respondent.

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Civil Action No. 3:23-CV-00440-E-BN

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

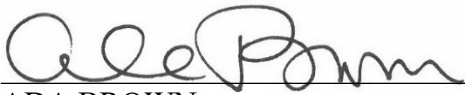
The Court conducted an independent review of the pleadings, files and records in this case, and the Findings, Conclusions, and Recommendation of the United States Magistrate Judge dated March 2, 2023. (Doc. 4). Objections were filed. (Doc. 5). The Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. The Court has found no error in the Findings, Conclusions, and Recommendation of the United States Magistrate Judge. (Doc. 4). Accordingly, the Court ACCEPTS the Findings, Conclusions, and Recommendation of the United States Magistrate Judge. (Doc. 4).

The court therefore **TRANSFERS** Petitioner’s unauthorized successive 28 U.S.C. § 2254 habeas application to the United States Court of Appeals for the Fifth Circuit for appropriate action. And, because the Court is transferring the application to the Fifth Circuit, a certificate of appealability (a COA) is not necessary. *See United States v. Fulton*, 780 F.3d 683, 688 (5th Cir.) (“[A] transfer order under [28 U.S.C.] § 1631 is not a final order within the meaning of [28 U.S.C.] § 2253(c)(1)(B), and the appeal of such an order does not require a COA.”), *cert. denied*, 577 U.S.

967 (2015); *Guel-Rivas v. Stephens*, 599 Fed. Appx. 175, 175 (5th Cir. 2015) (per curiam) (applying *Fulton*'s holding to transfer of a successive Section 2254 application).

**SO ORDERED.**

18th day of April, 2023.

  
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ADA BROWN  
UNITED STATES DISTRICT JUDGE